

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NINO MARTINENKO, on behalf of herself and
Others similarly situated,

Plaintiff,

-against-

Case No: 22-CV-518

212 STEAKHOUSE, INC., and NIKOLAY VOLPER,

Defendants.

-----x

EXAMINATION of a Non-Party Witness

DAGMARA HUK

December 20, 2022

TENEJA THWEATT, Notary Public
489178

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

2 -----x
3 NINO MARTINENKO, on behalf of herself and
Others similarly situated,

4 Plaintiff,

5 -against- Case No: 22-CV-518

7 212 STEAKHOUSE, INC., and NIKOLAY VOLPER,

8 Defendants.

9 -----x
10 EXAMINATION of a Non-Party Witness,
11 DAGMARA HUK, taken by the Defendants, pursuant to
12 Court Order, held at the Law Offices of Mitchell S.
13 Segal, P.C., 137 5th Avenue, 9th Floor, New York,
14 New York 10010, on December 20, 2022, at 1:38 p.m.,
15 before a Notary Public of the State of New York.

16 *****

17 BARKLEY COURT REPORTERS

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1 A P P E A R A N C E S:

2 JOSEPH & KIRSCHENBAUM, LLP
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4 (212)688-5640

5 BY: MICHAEL DiGIULIO, ESQ.
Mike@jk-llp.com

7
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Manhasset, New York 11303
10 (516)415-0100

11 BY: MITCHELL S. SEGAL, ESQ.
Msegal@segallaw.com

12
13
14 ALSO PRESENT:

15 NIKOLAY VOLPER, Defendant

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STIPULATIONS:

2 IT IS STIPULATED AND AGREED by and between the
3 attorneys for the respective parties herein, and in
compliance with Rule 221 of the Uniform Rules for
the Trial Courts:

5 THAT the parties recognize the provision of Rule
3115 subdivisions (b), (c) and/or (d). All
6 objections made at a deposition shall be noted by
the officer before whom the deposition is taken,
7 and the answer shall be given and the deposition
shall proceed subject to the objections and to the
right of a person to apply for appropriate relief
8 pursuant to Article 31 of the C.P.L.R.: .

9 THAT every objection raised during a deposition
10 shall be stated succinctly and framed so as not to
11 suggest an answer to the deponent and, at the
request of the questioning attorney, shall include
12 a clear statement as to any defect in form or other
basis of error or irregularity. Except to the
13 extent permitted by CPLR Rule 3115 or by this rule,
during the course of the examination persons in
attendance shall not make statements or comments
that interfere with the questioning.

15 THAT a deponent shall answer all questions at a
16 deposition, except (i) to preserve a privilege or
17 right of confidentiality, (ii) to enforce a
18 limitation set forth in an order of a court, or
19 (iii) when the question is plainly improper and
20 would, if answered, cause significant prejudice to
any person. An attorney shall not direct a
21 deponent not to answer except as provided in CPLR
Rule 3115 or this subdivision. Any refusal to
answer or direction not to answer shall be
accompanied by a succinct and clear statement on
the basis therefore. If the deponent does not
answer a question, the examining party shall have
the right to complete the remainder of the
deposition.

22
23 THAT an attorney shall not interrupt the deposition
for the purpose of communicating with the deponent
unless all parties consent or the communication is
24 made for the purpose of determining whether the
question should not be answered on the grounds set
25 forth in Section 221.2 of these rules, and, in such

1 event, the reason for the communication shall be
2 stated for the record succinctly and clearly.
3

4 THAT the failure to object to any question or to
move to strike any testimony at this examination
shall not be a bar or waiver to make such objection
or motion at the time of the trial of this action,
and is hereby reserved; and
5

6 THAT this examination may be signed and sworn to by
the witness examined herein before any Notary
Public, but the failure to do so or to return the
7 original of the examination to the attorney on
whose behalf the examination is taken, shall not be
8 deemed a waiver of the rights provided by Rule 3116
and 3117 of the C.P.L.R., and shall be controlled
9 thereby; and

10 THAT the certification and filing of the original
of this examination are hereby waived.
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1 D A G M A R A H U K, the witness herein, having
2 been first duly sworn by a Notary Public of the
3 State of New York, was examined and testified as
4 follows:

5 EXAMINATION BY

6 MR. SEGAL:

7 Q. State your name for the record, please.

8 A. Dagmara Huk.

9 Q. State your address for the record, please.

10 A. 342 East 62nd Street, Number 19, New York,
11 New York 10065.

12 Q. Good afternoon. My name is Mitch Segal. I
13 represent the defendants in this action. I'm here
14 to depose you pursuant to this lawsuit. I'm going
15 to ask you questions. We'll try not to talk over
16 each other. And just give an audible answer so the
17 transcriber can record the answer.

18 Have you ever been in a deposition before?

19 A. Yes.

20 Q. I'm sorry?

21 A. Yes.

22 Q. When was that?

23 A. My previous case, not related to this.

24 Q. Another labor case?

25 A. No.

1 D. Huk

2 Q. Okay. So you have. You understand.

3 Okay. So Dagmara, when did you come to the
4 U.S.?

5 A. In 2008.

6 Q. And where were you from originally?

7 A. I'm Polish.

8 Q. So you're from Poland?

9 A. Mm-hmm.

10 Q. And what's your educational background?

11 A. Healthcare.

12 Q. Did you go to high school?

13 A. In Poland.

14 Q. Did you to college?

15 A. Yes.

16 Q. In Poland?

17 A. Here.

18 Q. Where did you go?

19 A. Private college, then Hunter College, then
20 City Tech in Brooklyn.

21 Q. And what did you study? Healthcare?

22 A. Healthcare.

23 Q. To do what?

24 A. To work in healthcare in a hospital.

25 Q. To be a...

1 D. Huk

2 A. Healthcare administrator.

3 (Reporter clarification.)

4 Q. Okay. And when did you graduate? When
5 were you done with your college studies?

6 A. Not sure. I'm not sure. It was a while
7 ago.

8 Q. Okay. Did you work in healthcare?

9 A. Yes.

10 Q. And where did you work?

11 A. Healthcare clinic in Brooklyn and then
12 Sloan Kettering.

13 Q. Okay. What was the healthcare clinic in
14 Brooklyn?

15 A. Multispecialty.

16 Q. Where are they located?

17 A. In Greenpoint.

18 Q. You have the address?

19 A. Yes, 145 Nassau.

20 (Reporter clarification.)

21 Q. Nassau Street?

22 A. Mm-hmm.

23 Q. Okay. And how long did you work there for?

24 A. A while. Five, six years.

25 Q. Okay. When did you leave there?

1 D. Huk

2 A. Don't remember. A while ago.

3 Q. You need to be a little more specific on
4 your answers.

5 A. I can't give you -- I can't give you a year
6 if I don't remember it. It was years ago. I've
7 been here over -- like, while so --

8 Q. You've been here 14 years?

9 A. Yeah.

10 Q. You went to school. And thereafter you
11 worked. So --

12 A. I did both.

13 Q. Correct. So --

14 A. I worked and go to school at the same time.

15 Q. How many years did you go to school?

16 A. Sixish.

17 Q. Okay. So 2014, then you graduated or you
18 were done with school?

19 A. Possibly.

20 Q. Okay. And so possibly you graduated in
21 2014, maybe, possibly you worked at the Brooklyn
22 healthcare place for five years. So maybe 2019?

23 A. I start working there before I started
24 school.

25 Q. Okay. So how many years after school did

1 D. Huk

2 you work there for?

3 A. How many years? I don't remember. It was
4 a while ago. I don't remember if I -- no. I
5 didn't finish. I left the clinic before I
6 graduated school.

7 Q. By the way, I forgot to ask two questions.

8 Are you under the influence of any thing today?

9 A. No.

10 Q. Did you take any drugs?

11 A. No.

12 Q. Any alcohol in the last 24 hours?

13 A. No.

14 Q. Okay. So when did you start at Sloan
15 Kettering?

16 A. Can I pull up my resume so I can give you
17 exact dates?

18 MR. DiGIULIO: No.

19 Q. No. Just from your best recollection.

20 A. 2017 maybe.

21 Q. And you worked there for how long?

22 A. Year and a half.

23 Q. Okay. And what did you do after that,
24 before you started at 212 Steakhouse?

25 A. I worked at the restaurant. I worked at

1 D. Huk

2 the other restaurant.

3 Q. What's the other restaurant?

4 A. Bistango.

5 Q. Bistango?

6 A. Bistango, yes.

7 Q. Where is that?

8 A. Between 29th and 3rd.

9 Q. And when did you start there, do you
10 remember?

11 A. I worked there throughout the school. I
12 worked at the healthcare clinic. I went to school,
13 and then I was working at Bistango as well.

14 Q. When was the last time you worked at
15 Bistango? How do you spell that, by the way?

16 A. B-I-S-T-A-N-G-O.

17 Q. Bistango. Okay.

18 A. They shut down.

19 Q. Is that why you left there?

20 A. Mm-hmm.

21 Q. Do you know when that was?

22 A. During COVID.

23 Q. Oh, okay. In the beginning, March of 20 --

24 A. Mm-hmm.

25 (Reporter clarification.)

1 D. Huk

2 A. Yes.

3 Q. What was your next job after Bistango when
4 they closed?

5 A. After Bistango, I worked at Jue Lan.

6 Q. Jue Lan?

7 A. Mm-hmm.

8 Q. Right here?

9 A. Yes.

10 Q. When did you start there?

11 A. The summer after things were opened
12 outdoors. But I didn't stay --

13 (Cell phone interruption.)

14 Q. What was your position at Jue Lan?

15 A. Server.

16 Q. When did you start? I'm sorry. What did
17 you say, summer of '20?

18 A. July.

19 Q. And that was because they had the outdoor
20 thing going on?

21 A. Mm-hmm.

22 Q. July of '20?

23 A. Yes.

24 Q. How long did you work there for?

25 A. Maybe two months.

1 D. Huk
2 Q. Why did you leave there?
3 A. I didn't like the environment.
4 Q. What do you mean by that?
5 A. Just didn't like the environment.
6 Q. The staff, the patrons?
7 A. It was long hours.
8 Q. You didn't work lunch though, did you? I
9 don't even think they had lunch back then.
10 A. I did work lunch there.
11 Q. You did. Okay.
12 So that was from July '20 to August '20?
13 A. Right before I started working at the
14 steakhouse. Yes.
15 Q. So when did you start at 212 Steakhouse?
16 A. End of summer, August 2020.
17 Q. And at Bistango you were a server also?
18 A. Server, bartender, manager.
19 Q. And Jue Lan you were just a server?
20 A. Mm-hmm.
21 Yes. Sorry. Just a habit.
22 Q. That's okay. Not a problem.
23 And what was your position when you started
24 at 212 Steakhouse?
25 A. Bartender.

1 D. Huk

2 Q. How did you find out about the position at
3 212 Steakhouse?

4 A. Through craigslist.

5 Q. You started in August 2020, and when did
6 you work until?

7 A. October -- September, October 2021.

8 Q. How many days a week did you work?

9 A. Depending how many days they needed me for.
10 I would say five, six.

11 Q. What days were those?

12 A. I'm sorry?

13 Q. Which days?

14 A. Depending on the schedule. The schedule
15 changes every week.

16 Q. Would you work weekends every week?

17 A. Sure. Always Saturdays.

18 Q. Sundays?

19 A. Sundays.

20 Q. And how many hours a week did you work --
21 how many hours per day did you work?

22 A. Depending on the need, from opening through
23 closing.

24 Q. Well, did you --

25 A. Sometimes we stayed longer.

1 D. Huk

2 Q. Did you work lunch hours?

3 A. We didn't have lunch back then. We just
4 started towards the end.

5 Q. Okay. So on average, when did you start
6 work?

7 A. Can you repeat the question?

8 Q. Yes. Generally what time did you start?

9 A. We would start at 3:00.

10 Q. 3:00?

11 A. 3:00 or 4:00, yes.

12 Q. Well, 3:00 or 4:00 is two different -- what
13 do you think?

14 A. Sometimes we had to come in early, like, to
15 take care of -- unpack the liquor or help with
16 something. So most of the time it was 3:00,
17 sometimes it was 4:00.

18 Q. What time did you leave?

19 A. I would say 11:00, 11:30 sometimes. If we
20 had a party, maybe 12:00.

21 Q. How many times did you have a party there
22 on average?

23 A. When it happened.

24 Q. You have to try to be succinct with your
25 answers.

1 D. Huk

2 MR. DiGIULIO: Objection.

3 Q. You can't just be general.

4 MR. DiGIULIO: Objection. She's
5 answering the best that she can.

6 Q. Sometimes is not going to work.

7 In your opinion, how many parties did they
8 have per week, if any?

9 MR. DiGIULIO: Objection to the
10 form. You can answer, if you know.

11 A. You can't generalize how many parties a
12 week. It's a restaurant business.

13 Q. I'm familiar.

14 A. I'm glad you are.

15 Q. How many parties a week?

16 A. I don't know how many parties. I can't
17 answer that question.

18 Q. Zero, once every week, two every week?

19 A. I can't answer that question.

20 Q. You can't answer that question?

21 A. It always depends on a season or the --

22 Q. Well, you didn't work there for that many
23 seasons, right? So you worked there from --

24 MR. DiGIULIO: All four, I think.

25 A. Yeah.

1 D. Huk

2 Q. At best. So what seasons were busier for
3 parties?

4 A. Holidays are busier. Easter, maybe, was
5 busier, birthdays. It all depends. There's no --

6 Q. Birthdays isn't a season. Easter is one
7 week.

8 A. Like, January is usually slower, as you
9 know. Then it picks up around March, April, May,
10 then September when kids are in school. It all
11 depends on the season.

12 Q. Okay. So you really don't know. All
13 right?

14 A. I didn't say I don't know.

15 Q. Well, you were answering (unintelligible).
16 Okay. What were you paid?

17 MR. DIGIULIO: Objection to the
18 form. You can answer.

19 Q. Withdrawn. I'll change the question.
20 How much per hour did you work?

21 MR. DIGIULIO: Objection to the
22 form. You can answer. You can answer.

23 A. How much per hour, \$10.

24 Q. Was that through the whole time you worked?

25 A. Yes.

1 D. Huk

2 Q. Okay. And did you earn tips on top of
3 that?

4 A. Yes.

5 Q. And what was your average tips per day?

6 A. You mean cash tips?

7 Q. Well, both credit card and cash?

8 A. Average per day?

9 Q. Or week, whatever is easier for you --

10 A. Week, below -- on my paycheck, below a
11 thousand.

12 Q. A thousand?

13 A. Below usually. It was like 800, 900.

14 Q. Eight hundred to a thousand; is that fair
15 to say?

16 A. Yes.

17 Q. And that is both credit card and cash, or
18 just credit card?

19 A. Credit card.

20 Q. What about cash?

21 A. I don't really keep track of -- I don't
22 really keep track of my cash. Maybe 400.

23 Q. So you don't count your cash when you get
24 the cash?

25 A. No, I don't.

1 D. Huk

2 Q. That's interesting.

3 Okay. And that's per week, 400, or per
4 day?

5 A. Per week.

6 Q. And why did you leave?

7 A. Because I was hired as bartender, and I got
8 demoted to a server without my permission.

9 Q. Who demoted you?

10 A. The owners.

11 Q. Who is that?

12 A. Nikolay.

13 Q. And why do you feel the -- I'm sorry. Why
14 do you feel the server is a demotion from the
15 bartender?

16 A. Because that's not position I was hired
17 for.

18 Q. And why were you demoted?

19 A. Because --

20 MR. DIGIULIO: You can answer if
21 you know.

22 A. I'm not -- honestly, I'm not sure.

23 Q. What do you think?

24 A. Because they hired another person.

25 Q. Okay. Why would they do that?

1 D. Huk

2 A. I'm not sure.

3 Q. How did you find out about this lawsuit,
4 craigslist?

5 A. No. I don't think it was on craigslist.

6 Q. How did you find out?

7 A. Through my lawyer.

8 Q. Through your lawyer?

9 A. Yes. I got contacted by my lawyer.

10 Q. Your lawyer contacted you about the
11 lawsuit?

12 A. (No verbal response.)

13 Q. And what did your lawyer say?

14 MR. DIGIULIO: Objection. Don't
15 answer that.

16 Q. Okay. That's interesting.

17 Did you clock -- well, let's go back for a
18 second.

19 So when you were paid, you received payroll
20 checks?

21 A. You mean the printout?

22 Q. Yeah.

23 A. Not all the time. Most of the time we
24 didn't.

25 Q. The checks that you received, were they

1 D. Huk

2 handwritten, or they were from a payroll company?

3 A. Handwritten.

4 Q. Did you ever get a check from a payroll
5 company?

6 A. No.

7 Q. No?

8 A. (No verbal response.)

9 Q. When you went to work, did you clock in and
10 clock out? In other words, when you walked in, did
11 you have to put your ID, and you clocked into the
12 POS system?

13 A. Yes, you have to use your number.

14 Q. And you clocked out also when you left?

15 A. Sure. Yes.

16 Q. And were you served a meal during the time
17 you were there?

18 A. Family staff meal.

19 Q. Yeah. Right.

20 When did that happen?

21 A. Usually at the beginning of the shift.

22 Q. 4:00?

23 A. Mm-hmm. But we didn't really have time to
24 do it because there were things we had to take care
25 of. So it wasn't consistent.

1 D. Huk

2 Q. Well, was the time that they served the
3 meal consistent, or it depended on your schedule
4 and what you had to do?

5 A. Depending on the schedule.

6 Q. But they served it normally at 4:00?

7 A. Depends how busy the kitchen is. Sometimes
8 it was 5:00; sometimes it was 4:00.

9 Q. 5:00 the restaurant opened up though, yes?

10 A. Mm-hmm.

11 MR. DIGIULIO: Yes?

12 THE WITNESS: Yes, I'm sorry.

13 Q. That's okay.

14 But you clocked in at 4:00. And when they
15 served you, you never clocked out when they served
16 the meal if you ever sat down and ate, did you?

17 A. No, because we didn't have a formal break.

18 Q. Well, the meal --

19 A. Meaning that if the meal was served, I
20 would start eating. But if there was something --
21 I had to answer phone, I had to get up and answer
22 the phone call, meaning work, not have a break.

23 Q. What other things did you do besides
24 bartending there?

25 A. Order supply, order liquor, go to the

1 D. Huk

2 liquor store, buy stuff. Go to do pay -- write the
3 checks, clean, helping the kitchen, anything they
4 needed.

5 Q. Was there one particular person in charge
6 of payroll?

7 A. Yes, Imran.

8 Q. What about writing the checks?

9 A. He -- most of the time he would not write
10 the checks. He would ask the staff to write the
11 check.

12 Q. Who wrote the checks, primarily, out of the
13 staff?

14 A. There was no primary person. It was
15 sometimes me, sometimes Nino, some- --

16 (Cell phone interruption.)

17 (Whereupon, a discussion was held
18 off the record.)

19 Q. Sometimes Nino, sometimes you?

20 A. So it depends who was working that day.

21 Q. Other than Nino and you, was there anybody
22 else?

23 A. Sometimes Sasha.

24 Q. Sasha?

25 A. Sometimes Imran.

1 D. Huk

2 Q. What was the tip process at the end of the
3 evening? How did that work?

4 A. It was a points system. You want me to
5 explain it to you?

6 Q. No, I kind of know it.

7 And how did that work? Was there someone
8 in charge of that or just at the end of the night?

9 A. Whoever was available.

10 Q. And did you get paid your credit card tips
11 at the end of the week or every day? How did that
12 work?

13 A. Weekly.

14 Q. Weekly?

15 A. Mm-hmm.

16 Q. And when you did the tips, was cash
17 included in the tip sheets or not?

18 A. Was the cash included in the tip sheet?

19 Q. In other words, let me give you a
20 hypothetical. Let's say you made \$200 in credit
21 card tips. Let's say you made \$50 in cash tips.
22 Was that included in everyone's analysis? Everyone
23 said how much cash they made or just the credit
24 cards?

25 A. Yes, it was written as well.

1 D. Huk

2 Q. I'm sorry?

3 A. It was written.

4 Q. It was written?

5 A. Yeah.

6 Q. Did you report the cash tips?

7 A. Yes.

8 Q. How did you do that?

9 I understand on the analysis. Did you
10 report the cash tips to the owners of the
11 restaurant?

12 A. Yes, it was written -- they could open the
13 book and see how much we made.

14 Q. Do you know that you have to report your
15 cash tips to owners of the restaurant so they can
16 file a form with the IRS? Did you report that to
17 them?

18 MR. DiGIULIO: Objection. Asked
19 and answered. You can go again.

20 MR. SEGAL: I don't think it was,
21 actually.

22 MR. DiGIULIO: You can answer his
23 question again.

24 A. I don't think that's -- I mean, that's --
25 to my knowledge, that's the manager's

1 D. Huk

2 responsibility to report whatever is there, because
3 the evidence was visible to the manager. So that's
4 not my duty. I was -- again, I was a bartender.
5 So that's not my duty to report this to anybody.

6 Q. Did you report the cash tips on your tax
7 return?

8 A. Yes, I did.

9 Q. So your tax return has cash tips on it?

10 MR. DiGIULIO: Objection. Asked
11 and answered. You don't have to answer
12 again.

13 MR. SEGAL: Yes, she does. Your
14 objection is noted. She's got to answer
15 again.

16 MR. DiGIULIO: Sure. One more
17 time. Go ahead.

18 A. Yes, I reported cash tips.

19 Q. Okay. When you got your wage statement at
20 the end of the year, what was it: a W-2 or -- was
21 it a W-2?

22 A. W-2, yes.

23 Q. That W-2 included the hourly wage plus your
24 credit card tips; is that correct?

25 A. Yes.

1 D. Huk

2 Q. Okay. But it didn't include the cash tips?

3 A. No.

4 Q. Okay. But you reported that, as you said,
5 on top of that?

6 A. Well, my accountant takes care of that.

7 Q. Did he report it?

8 A. Yes. I believe so.

9 Q. Did you work full-time for 212 Steakhouse
10 throughout your whole tenure?

11 A. Yes.

12 Q. Yes?

13 You never worked part-time for them?

14 A. No.

15 Q. After you left 212 Steakhouse, did you work
16 part-time for them sometimes?

17 A. If I left, why would I work for them?

18 Q. I don't know.

19 A. Can you please rephrase the question.

20 Q. Well, you just answered it. So the
21 answer's no, I guess?

22 A. I guess.

23 Q. Yes or no?

24 MR. DiGIULIO: Objection to the
25 form. You answer.

1 D. Huk

2 A. (No verbal response.)

3 Q. Okay.

4 (Whereupon, a discussion was held
5 off the record.)

6 Q. So I show you what was labeled as
7 Defendant's Exhibit 4. And this is -- he'll
8 explain it to you. And this is a page of your time
9 records from August 31st to December 30th. So I
10 want to show you this.

11 So that is your clock-in and clock-out; is
12 that correct?

13 A. Yes.

14 Q. Okay. And so you never took a break,
15 right? So there was only a beginning clock-in and
16 an ending clock-out?

17 A. Correct.

18 Q. And this line here is the hours that you
19 worked. Okay. And this period covers September,
20 October, November and December.

21 A. Mm-hmm.

22 Q. And -- so if you look at the hours, are
23 there many days that you worked over eight hours?

24 MR. DIGIULIO: Objection. The
25 document speaks for itself. You can

1 D. Huk

2 answer.

3 A. As you can see (indicating).

4 Q. Not really?

5 A. I didn't say not really. I'm just saying
6 the document speaks for itself.

7 Q. You're saying the document speaks for

8 itself. Excellent. Very good.

9 There's only a couple of days where you
10 worked more than eight days. So are you seeking
11 claims for overtime wages?

12 A. Yes.

13 Q. How?

14 MR. DIGIULIO: Objection to the
15 form. You can answer.

16 Q. Tell me how. Those are the hours that you
17 worked.

18 A. I --

19 Q. Show me one week where you worked over 40
20 hours.

21 A. I can't do the math right now.

22 Q. There probably is not one, to be honest
23 with you.

24 MR. DIGIULIO: Objection.

25 Q. Did you ever work --

1 D. Huk

2 (Whereupon, a discussion was held
3 off the record.)

4 Q. Was there ever a day where you worked in
5 excess of ten hours?

6 A. I worked overtime.

7 Q. Well, we just went through it. You really
8 didn't, but...

9 MR. DIGIULIO: Objection.

10 Q. All right. So let's go back to it then.
11 Show me one week where you worked in excess of 40
12 hours.

13 A. I need more reference than that. I'm not
14 going to do the math. I did work over 40 hours.

15 Q. Based on what? Those are your time
16 records.

17 A. On the hours.

18 Q. Are those correct? Are those the right
19 clock-in and clock-out?

20 A. Would you like me to do the math right now?

21 Q. You can.

22 A. I worked overtime.

23 Q. Based on what?

24 A. On the time.

25 Q. Based on overtime?

1 D. Huk

2 A. Based on the time that I spent at the
3 restaurant.

4 Q. Okay. All right. And was there any days
5 that you worked in excess of ten hours per day?

6 A. Ten hours per day?

7 MR. DiGIULIO: Are you going to
8 show her the exhibit?

9 Q. (Handing.)

10 A. 11:45 on that page, 11:44.

11 Q. That's not yours --

12 MR. DiGIULIO: The top pages.

13 Q. So two days, basically?

14 A. Well, based on one page that you're showing
15 me right now. So yes, I did work more than ten
16 hours, to answer your question.

17 Q. Twice?

18 A. Still.

19 Q. Who exactly told you that they were
20 changing your position from a bartender to a
21 server?

22 A. Nikolay.

23 Q. And did he give a reason?

24 A. Did he give me a reason? He said he hired
25 this guy that won the award in Vegas, and he's

1 D. Huk

2 going to be a bartender from now on. But he's not
3 going to take responsibilities of a server, which I
4 was doing. Like, he's not going to help. He's
5 going to get the same points, and he's going to be
6 a bartender from now on.

7 Q. How long did you work at 212 as a server?

8 A. From the time that he hired another
9 bartender.

10 Q. When was that? You only worked there a
11 year, and it was only a year and a half ago, if
12 that. So it's not that hard to remember.

13 A. Yeah. Well, it was a while ago.

14 Q. So you only -- you can't remember --

15 A. I can't give you exact month because I
16 can't remember. Whenever he was hired, and you
17 should know when he was hired.

18 Q. Well, you should know because it affected
19 your employment, not mine.

20 How long did you act as a server until you
21 left?

22 A. Few months.

23 Q. Two months, three months?

24 A. Maybe three months. I'm not going to
25 answer that because I don't want to give you an

1 D. Huk

2 answer that's not right. Few months.

3 Q. No. That's fine.

4 We'll take a two-minute break. All right?

5 (Whereupon, a recess was taken at
6 this time.)

7 (Defendant's Exhibit 1, payroll
8 records, was marked for identification.)

9 Q. So I show you Defendant's Exhibit 1.
10 Dagmara, please review Defendant's
11 Exhibit 1.

12 A. Sure.

13 Q. Do you know what these are?

14 A. Yes.

15 Q. What are they?

16 A. Pay stubs.

17 Q. So earlier, I believe you said that you
18 didn't receive pay stubs; you only received written
19 checks?

20 MR. DIGIULIO: Objection.

21 Mischaracterizes the testimony. You can
22 answer.

23 Q. Well, let's go back then.

24 So did you receive these pay stubs every
25 time you were paid?

1 D. Huk

2 A. Not every time.

3 Q. When did you not receive these?

4 A. Depending if I was sent it or not. It was
5 no rule.

6 Q. Well, what is the -- well, look at the
7 dates. Go through the whole file.

8 A. Sure.

9 Q. Isn't it true -- and the dates are on the
10 top right. Isn't it true that this covered your
11 full time that you worked at the restaurant?

12 A. Repeat the question.

13 Q. I said if you look at the dates on the top
14 right and go through that whole exhibit --

15 A. Mm-hmm.

16 Q. -- isn't it true that this covered the
17 complete dates that you worked at the restaurant?

18 A. (Perusing.)

19 (Unintelligible.)

20 Possibly. I'm not sure.

21 Q. So if it possibly showed the full tenure at
22 the restaurant, then you did receive wage
23 statements every time you were paid; is that
24 correct?

25 A. What do you mean by "wage statement"?

1 D. Huk

2 Q. This is called a wage statement?

3 A. No, I didn't.

4 Q. You never received this every time you got
5 paid?

6 A. No. No, I didn't. Sometimes we would
7 receive only a --

8 (Reporter clarification.)

9 A. Sometimes we would receive just an amount
10 to write the checks without the pay stubs.

11 Q. The times that you supposedly did not
12 receive this, did you request this?

13 A. No.

14 Q. And the times that you did receive this,
15 who gave this to you?

16 A. Imran.

17 Q. Based on this, the restaurant had wage
18 statements every time you were paid; is that
19 correct?

20 MR. DIGIULIO: Objection.

21 Mischaracterizes the exhibit.

22 A. Wait. I also want to go back because you
23 said based on the date. I have Nino's here, so why
24 am I looking at Nino's pay stub?

25 Q. Nino's you don't have to look at. So just

1 D. Huk

2 look at yours.

3 A. So why would you say it shows my entire
4 tenure if it's only a few pages of my pay stubs and
5 the rest is Nino's?

6 Q. Well, let's look at yours.

7 A. There's only few of them.

8 Q. There's not a few of them. There's a lot
9 of them.

10 A. You said it's my entire tenure.

11 Q. So it started at 9/28/20, and it goes to --

12 MR. DiGIULIO: Missing a lot of
13 weeks.

14 A. Yeah, I just realized it. The rest is
15 Nino. I thought it was mine.

16 Q. It goes to June of 2021. Did you work the
17 weeks that it states that you have under your name?

18 A. Well, yes. But I don't think it's the full
19 thing.

20 Q. Okay.

21 A. Because we're going from 11/08, and then
22 next one is 12/07. So we're skipping a month here.

23 Q. Well, let's look --

24 A. Then 12/07, and then 2/22. So we're
25 skipping two months. Then another month, 3/01.

1 D. Huk

2 Then we have a following week, 5/03. So we're
3 skipping months here -- a lot of months actually.

4 Q. Okay. These weeks that you worked, though,
5 did you receive these statements?

6 A. Like I said before, not all the time.

7 Q. And when you closed out a check, was that
8 only checks at the bar?

9 MR. DIGIULIO: Objection to the
10 form. You can answer, if you know.

11 Q. In other words, when you closed -- you had
12 an employee ID, right? And you could ring up
13 items, right? People at the bar, or you did a meal
14 at the bar, you closed out those checks?

15 A. I don't understand the question.

16 Q. Okay. I'll try it again.

17 Let's say you had a couple at the bar, and
18 they decided to eat at the bar. Is that your
19 check? Did you open up that check on the POS
20 system?

21 A. Yes.

22 Q. And then when they were done, you closed it
23 out, and you gave them the check, right, and took
24 their payment?

25 A. That's how it works.

1 D. Huk

2 Q. Okay. Yeah. Okay.

3 And if they paid you in cash, did you
4 report that as cash?

5 MR. DIGIULIO: Objection to the
6 form of the question. You can answer.

7 Q. No. Let's say they paid -- the bill was 80
8 bucks, and they give you a hundred bucks. Would
9 you report that as a cash --

10 A. Well, how else would you report it?

11 Q. I don't know. I'm asking you.

12 A. I don't know either. How else can you
13 report it if people are paying cash?

14 Q. Well, you don't know or --

15 A. No. I'm asking you.

16 Q. I'm not under questioning. You are. So I
17 don't really care what I said.

18 A. Yes, people pay cash. You close it as
19 cash. If people pay as a credit card, you close it
20 as credit card. That's just how it works.

21 Q. In that instance, so they paid \$80, and
22 they gave you \$20, did you report that as a cash
23 tip in the system?

24 A. Report it as a cash tip in the system?

25 Q. Yes.

1 D. Huk

2 A. There was no way to report cash tip in the
3 system.

4 Q. There was no way to report the cash tip --

5 A. We didn't do that.

6 Q. So the only way to report the cash tip,
7 that \$20, was at the end of the night, that tip
8 sheet?

9 A. Correct.

10 Q. So if it wasn't in the system as a cash
11 tip, how would the management know how much cash to
12 report?

13 A. Like I said, at the end of the night we
14 would write it down at the back of the page.

15 Q. And did they ever ask you -- forget about
16 at the end of the night, did they ever ask you at
17 the end of the week how much cash tip you earned?

18 A. No one asked me that question.

19 Q. So you assumed that management would go
20 through those cash sheets and report those cash
21 tips; is that correct? The tip sheets, I'm sorry,
22 and report the cash tips?

23 A. Again, I'm a bartender.

24 Q. Well, you're also a manager at your prior
25 restaurant and a server?

1 D. Huk

2 A. Yeah, but that's not my --

3 Q. Well, you're a jack-of-all-trades. You do
4 everything, right? And according to you, you did
5 everything at this restaurant too, right?

6 (Simultaneous speakers.)

7 A. I did.

8 Q. You did payroll --

9 A. Yeah, but it's not my --

10 MR. DIGIULIO: Objection.

11 Mischaracterizes testimony. You can answer
12 it if there's a question.

13 Q. Did you ever file for unemployment during
14 any period of time while you were working at the
15 restaurant?

16 A. No.

17 Q. Did you file for unemployment right after
18 you stopped working at this restaurant?

19 A. No.

20 Q. No. So you never filed for unemployment
21 related to 212 Steakhouse?

22 A. No.

23 Q. Okay. And as far as working during the
24 pandemic, did you ever get COVID while you were
25 working in the restaurant?

1 D. Huk

2 A. Did I get COVID when I was working?

3 Q. Right. During your employment at the
4 restaurant towards -- at any time?

5 A. I don't think so. I don't remember that,
6 but I don't think so.

7 Q. Did any other employees get COVID, that you
8 know of?

9 A. Well, a lot of people were getting sick,
10 and it wasn't necessarily related to COVID because
11 people get sick during -- like now.

12 Q. Did you speak to anybody else, any of the
13 other employees about --

14 MR. DIGIULIO: Objection.

15 Q. -- getting COVID or them getting COVID?

16 MR. DIGIULIO: I'm going to object
17 to this whole line of questioning around
18 this. It's totally irrelevant
19 (unintelligible) invasion of privacy.

20 MR. SEGAL: I'm not sure it's
21 invasion of privacy, but...

22 MR. DIGIULIO: I instruct her not
23 to answer.

24 MR. SEGAL: All right. Give us one
25 more break. We'll come back, and we'll

1 D. Huk

2 wrap this up.

3 (Whereupon, a recess was taken at
4 this time.)

5 Q. So Dagmara, I'm going to show you
6 Defendant's Exhibit 2 one more time. I guess this
7 is from the earlier deposition.

8 Do you see your name on that tip sheet?

9 A. Yes.

10 Q. Okay. And is this a weekly tip
11 declaration?

12 A. Yes.

13 Q. And does it contain both credit card tips
14 and cash, or just credit card tips?

15 A. This is credit cards.

16 Q. Okay. And then I want to show you -- this
17 is -- we don't have one of those marked already?

18 MR. DiGIULIO: I think we do.

19 Yeah. But you can mark it again, if you
20 want.

21 (Whereupon, a discussion was held
22 off the record.)

23 Q. So I'm going to show you Exhibit 3. Are
24 you one of the servers listed on this sheet?

25 A. I'm sorry. Repeat the question.

1 D. Huk

2 Q. Are you one of the servers listed on this
3 sheet?

4 A. Correct.

5 Q. And this is a daily, instead of the weekly
6 that we just looked at?

7 A. Yes.

8 Q. And this contains solely credit card tips
9 and noncash tips; is that correct?

10 A. Yes.

11 Q. Okay. Was there ever a time that you were
12 unable to work at 212 Steakhouse due to COVID?

13 MR. DiGIULIO: You can answer.

14 A. Unable to work at the restaurant due to
15 COVID? I don't -- no, I don't think so.

16 Q. Were you familiar with the law that
17 required restaurant employees to wear masks and be
18 vaccinated?

19 A. Yes.

20

21 (Continued on next page to
22 accommodate jurat.)

23

24

25

1 Q. Did you comply with that law?

2 MR. DiGIULIO: Objection. I'm
3 going to instruct her not to answer again
4 for the same reasons you did before.

5 MR. SEGAL: I have no further
6 questions. Thank you for your time.

7 MR. DiGIULIO: I have no further
8 questions either.

9 (Time Noted: 3:03 p.m.)

10

11

12

DAGMARA HUK

13

14 Subscribed and sworn to before me
15 this _____ day of _____ 20___.
16

17

18

Notary Public

19

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25